



**Billing code 3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 946 and 980**

**[Doc. No. AMS-FV-13-0068; FV13-946-3 IR]**

**Irish Potatoes Grown in Washington and Imported Potatoes;  
Modification of the Handling Regulations, Reporting  
Requirements, and Import Regulations for Red Types of  
Potatoes**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule exempts red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements of the Washington potato marketing order for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. The marketing order regulates the handling of Irish potatoes grown in Washington and is administered locally by the State of Washington Potato Committee (Committee). During the exemption period, reports will be required from handlers of red types of potatoes to obtain information necessary to administer the marketing order. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this action also exempts imported red-skinned, round type potatoes from minimum grade, size,

quality, and maturity requirements. This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while giving the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective February 15, 2014; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities

submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This interim rule is also issued under section 8e of the Act, which provides that whenever certain specified

commodities, including potatoes, are regulated under a Federal marketing order, the importation of these commodities into the United States is prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866 and Executive Order 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulation issued under section 8e of the Act.

This rule exempts red types of potatoes from the order's handling regulations for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. This rule allows the Washington potato industry to market red types of potatoes without regard to the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed under the order.

This rule also modifies the order's reporting requirements to require reports from handlers of red types of potatoes for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. By modifying the reporting requirements, the Committee can continue to obtain information necessary to administer the marketing order, including the collection of assessments, in the absence of inspection certificates and reports issued by the Federal State Inspection Service (FSIS). Assessments

on all fresh red type potatoes handled under the order will remain in effect during the exemption period.

The order authorizes the establishment of handling regulations for all varieties or varietal types of potatoes grown in the production area. These regulations can include minimum grade, size, quality, maturity, and inspection requirements. They can also provide for the size, capacity, weight, dimensions, pack, marking, or labeling of containers used in the handling of such potatoes. The order also allows such handling regulations to be modified, suspended, or terminated when recommended by the Committee and approved by the Secretary.

When handling regulations are in effect, regulated potatoes must be inspected and certified by FSIS. As authorized under the order, the Committee uses information included on FSIS inspection certificates as a basis for collecting assessments and compiling industry statistics. Because this action exempts red types of potatoes from FSIS inspection and certification, the industry must collect necessary information from an alternate source. Therefore, this action also modifies current reporting requirements to require handlers to submit reports to provide information on the volume of red types of potatoes handled for the

fresh market during the exemption period.

The above-described authorities are found in §§ 946.51, 946.52, 946.60, and 946.70 of the order. Administrative rules and regulations issued under these authorities are found in §§ 946.143 and 946.336.

The Committee meets regularly to consider the effectiveness of regulatory requirements in place for Washington potatoes. These requirements are issued on a continuing basis and are subject to modification, suspension, or termination upon recommendation of the Committee and approval by USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA reviews recommendations made by the Committee, along with any additional information submitted by the Committee and other available information, and determines whether such recommendations would tend to effectuate the declared policy of the Act.

On May 9, 2013, the Committee met to discuss the handling regulations and the mandatory inspection requirements in effect for Washington potatoes. The Committee considered whether a short-term exemption of red types of potatoes from regulation could be beneficial. The

industry is concerned that the benefits of regulating the quality of Washington potatoes may be outweighed by the current cost of mandatory inspections.

After much consideration, on July 16, 2013, the Committee unanimously recommended temporarily exempting red types of potatoes from the handling regulations and modifying the reporting requirements for such potatoes. The temporary exemption was recommended for the duration of the current fiscal period so that the industry could evaluate the exemption's effects on the marketing of potatoes.

On December 10, 2013, the Committee again met to discuss the temporary exemption of red types of potatoes from the handling regulations. The Committee continued to believe that the exemption of red types of potatoes from handling regulations would reduce industry costs without negatively impacting the market. Upon further consideration, the Committee unanimously recommended exempting red types of potatoes from the handling regulations for the remainder of the current fiscal period and subsequent fiscal periods.

As a result of this exemption, red types of potatoes will not be subject to the minimum grade, size, quality,



cleanness, maturity, pack, marking, and inspection requirements of the order for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. Also during this time, modified reporting requirements will be in effect to require handlers to submit reports of their shipments of fresh red types of potatoes to the Committee.

Historically, an objective of the order's handling regulations has been to ensure that only quality Washington potatoes enter the fresh market, thereby fostering consumer satisfaction and increasing sales and returns for producers. However, the Committee reported that the cost for inspections has recently increased. With potato prices at reportedly low levels in recent years, the Committee studied the possibility of reducing production costs by eliminating the mandatory inspection requirement.

In discussing the relative benefits of quality control during the Committee meeting, some individuals expressed concern that eliminating quality requirements could result in lower quality potatoes being shipped to the fresh market, thereby negatively affecting consumer demand. Others expressed concern that without minimum requirements the overall quality of potatoes could decline and the Washington potato industry could lose sales to other potato

producing areas with mandatory quality and inspection requirements. While the industry recognizes that quality is an important factor for maintaining sales, the Committee believes the cost of mandatory inspections may exceed the benefits derived from the quality regulation of red types of potatoes.

The Committee believes that the exemption of red types of potatoes from handling regulations will also benefit the Washington potato industry. The Committee recommended that red types of potatoes be exempted from the regulations for the remainder of the current fiscal period and subsequent fiscal periods.

This rule modifies § 946.336 to exempt red types of potatoes from handling regulations for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. This rule does not restrict handlers from seeking inspection on a voluntary basis, if they so choose.

This action will result in a suspension of the monthly FSIS inspection reports for red types of potatoes. The Committee has utilized these monthly reports, compiled by FSIS from inspection certificates, as a basis for collecting assessments. During the exemption period, handlers will be required to report fresh shipments of red

types of potatoes directly to the Committee on an existing form that is being modified for this purpose. This information will allow the Committee to collect assessments and compile industry statistics.

Therefore, this rule modifies § 946.143 to require that each person handling red types of potatoes submit a monthly report to the Committee. The reporting requirement was originally established in 2010 to facilitate the exemption of russet type potatoes from the handling regulations. It will be modified to include the collection of information for red types of potatoes.

Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The modified reporting requirement will facilitate the Committee's ability to continue collecting the funds needed to cover necessary program costs.

Section 8e of the Act provides that when certain domestically produced commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as the domestically produced product. Minimum grade, size, quality, and

maturity requirements for potatoes imported into the United States are currently in effect under the import regulations. The import regulations distinguish between each of the three major types of potatoes handled domestically; (1) red-skinned, round type potatoes, (2) all other round type potatoes, and (3) long type potatoes.

Section 980.1(a)(2)(i) of the vegetable import regulations specifies that, during each month of the marketing year, imports of red-skinned, round type potatoes are in most direct competition with potatoes of the same type produced in the area covered by the order. Further, § 980.1(b)(1) provides that, through the entire year, the grade, size, quality, and maturity requirements of the order applicable to potatoes of the red-skinned, round type shall be the respective grade, size, quality, and maturity requirements for all imported red-skinned, round type potatoes. As such, the exemption from minimum grade, size, quality, and maturity requirements for domestic potatoes covered by the order also exempts red-skinned, round type potato varieties that are imported into the U.S. from grade, size, quality, and maturity requirements.

Prior to this action, red-skinned, round type potatoes imported into the U.S. must be U.S. No. 2 or better grade

and meet a minimum diameter of 1 7/8 inches. In addition, red-skinned, round type potatoes may be 3/4 inch minimum diameter, if such imported potatoes otherwise met the requirements of the U.S. No. 1 grade. Lastly, imported red-skinned, round type potatoes could not be more than "moderately skinned" as defined by the U.S. Standards for Grades of Potatoes.

As a result of the exemption of red types of potatoes from the order's handling regulations, and pursuant to the Act, this rule also modifies § 980.1(b)(1) to exempt imported red-skinned, round types of potatoes from the import regulations. However, this rule does not restrict importers from having their potatoes inspected or from meeting minimum grade, size, quality, or maturity requirements on a voluntary basis.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

For the 2011-2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average

producer price for Washington potatoes for 2011-2012 was \$7.90 per hundredweight. Taking the 2011-2012 shipments of fresh potatoes in the marketing order area (11,018,670 hundredweight), multiplying it by the average producer price for Washington potatoes, \$7.90, and then dividing it by the number of Washington potato producers (267) equates to an average gross annual revenue per producer of approximately \$326,021. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh potatoes averaged \$128.962 million from 2008 to 2012, ranging from a low of approximately \$106.502 million in 2012 to a high of approximately \$155.358 million in 2008. Taking the average dollar value of imported fresh potatoes, \$128.962 million, and dividing it by the number of potato importers, 571, results in average annual receipts per importer of approximately \$226,000. Since this below the SBA definition of small business (less than \$7 million in annual sales), most importers may be classified as small entities.

This rule exempts red types of potatoes from the handling regulations and modifies the reporting for the remainder of the 2013-2014 fiscal period and subsequent fiscal periods. The industry believes that the increased cost of mandatory inspections outweigh the benefits derived from quality regulation. This change is expected to reduce overall industry expenses and provide the industry with the opportunity to explore alternative marketing strategies.

As stated previously, the authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. In addition, the handling regulations are specified under § 946.336 of the order's administrative rules and regulations, and reporting requirements are specified under § 946.143.

The Committee does not anticipate that this rule will negatively impact small businesses. This rule will exempt red types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements for the current fiscal period and subsequent fiscal periods. Though inspections are not mandatory for such potatoes during the exemption period, handlers may choose to have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers.



The Committee discussed alternatives to this recommendation, including making no changes to the regulations. The Committee also considered different types of inspection programs, exempting all types of potatoes from handling regulations, and exempting red types from regulation temporarily instead of indefinitely. However, the Committee believes that the Washington potato industry will benefit more from the indefinite exemption of red types of potatoes from handling regulations.

The Committee identified no other alternatives to requiring handlers to report fresh market shipments of red types of potatoes. This information is necessary to administer the program, including the collection of assessments.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops.

This rule requires the submission of a monthly handler report for fresh red types of potatoes handled during the exemption period. This rule modifies the Russet Fresh Potato Report established for russet type potatoes to

include red types of potatoes during the period those types of potatoes are exempted from regulation. The modified Self-Reporting Potato Form will provide the Committee with information necessary to track shipments and collect assessments. AMS has submitted the modified form and a Justification of Change to OMB for approval.

While this rule requires a reporting requirement for red types of potatoes, their exemption from handling regulations also eliminates the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of red types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the exemption from handling regulations and inspection requirements for red types of potatoes is expected to reduce industry expenses.

AMS is committed to complying with the E-government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the May 9, July 16, and December 10, 2013, meetings were public meetings. All entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR**

**FURTHER INFORMATION CONTACT** section.

This interim rule invites comments on the exemption from handling regulations and the modification of the reporting requirements for red types of potatoes. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the shipping season for Washington red types of

potatoes began in July of 2013; (2) the Committee discussed and unanimously recommended these changes at public meetings and all interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of relaxation of the handling regulations as soon as possible; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### **List of Subjects**

7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 946 and 980 are amended as follows:

1. The authority citation for 7 CFR parts 946 and 980 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### **PART 946 - IRISH POTATOES GROWN IN WASHINGTON**

2. Section 946.143 is revised to read as follows:

**§ 946.143 Assessment reports.**

During the period that russet, red, yellow fleshed, and white types of potatoes are exempt from handling requirements under § 946.336, each person handling russet, red, yellow fleshed, and white types of potatoes shall submit a monthly report to the Committee by the 10<sup>th</sup> day of the month following the month such potatoes are handled. Each assessment report shall contain the following information:

- (a) The name and address of the handler;
- (b) The date and quantity of russet, red, yellow fleshed, and white types of potatoes handled;
- (c) The assessment payment due; and
- (d) Other information as may be requested by the Committee.

3. The introductory text of § 946.336 is revised to read as follows:

**§ 946.336 Handling regulation.**

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this

handling regulation and the assessment requirements specified in § 946.41: Provided, That russet type potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section: Provided further, That, from October 24, 2013, through June 30, 2014, yellow fleshed and white types of potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section: Provided further, That, effective February 15, 2014, red types of potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (e), and (g) of this section.

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#### **PART 980 - VEGETABLES; IMPORT REGULATIONS**

4. In § 980.1, paragraph (b) is revised to read as follows:

##### **§ 980.1 Import regulations; Irish potatoes.**

\* \* \* \* \*

(b) Grade, size, quality, and maturity requirements. On and after the effective date hereof importation of Irish potatoes, except certified seed potatoes and red skinned, round types of potatoes, shall be prohibited unless they comply with the following requirements.

(1) Through the entire year, the grade, size, quality, and maturity requirements of Area II, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter), applicable to potatoes of the round type, other than red-skinned varieties, shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

(2) Through the entire year the grade, size, quality, and maturity requirements of Marketing Order 945, as amended (part 945 of this chapter) applicable to potatoes of all long types shall be the respective grade, size, quality, and maturity requirements for imported potatoes of all long types.

(3) The grade, size, quality, and maturity requirements as provided for in this paragraph shall apply to imports of similar types of potatoes, unless otherwise ordered, on and after the effective date of the applicable domestic regulation or amendment thereto, as provided in



this paragraph or 3 days following publication of such regulation or amendment in the Federal Register, whichever is later.

\* \* \* \* \*

Dated: February 6, 2014

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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